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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA**

TOOTH ACRES, LLC, a Washington
limited liability company; GENE
SCHEEL, an individual,

Plaintiffs,

V.

HOODSTOCK RANCH, LLC, a
Washington limited liability company;
MARK GORDON HERON and
MARY KATHLEEN HERON,
husband and wife,

Defendants

Case No. 1:20-cv-3091

NOTICE OF REMOVAL

NOTICE OF REMOVAL
(No. _____)

1 **TO: THE CLERK AND HONORABLE JUDGES OF THE UNITED STATES**
 2 **DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON**

3 **PLEASE TAKE NOTICE** that Defendants Hoodstock Ranch, LLC, Mark
 4 Gordon Heron, and Mary Kathleen Heron (collectively, “Defendants”) hereby
 5 remove this action to this Court from the Superior Court of Washington in and for
 6 Klickitat County (“Klickitat County Superior Court”) pursuant to 28 U.S.C. §§
 7 1332, 1441, and 1446. In support of this Notice, Defendants respectfully state the
 8 following:

9 **I. STATE COURT ACTION**

10 On or about May 18, 2020, Plaintiffs Tooth Acres, LLC and Gene Scheel
 11 (“Plaintiffs”) filed the Complaint in Klickitat County Superior Court, where it was
 12 assigned Case No. 20-2-00074-20. The Complaint asserts causes of action for
 13 breach of promissory note and fraud, and seeks damages in excess of \$583,000. A
 14 copy of the Complaint is attached hereto as **Exhibit A**. Defendants were first
 15 served with a summons and copy of the Complaint on May 31, 2020. Declaration
 16 of Erick J. Haynie (“Haynie Decl.”) ¶ 5.

17 **II. GROUNDS FOR REMOVAL**

18 This action is removable under 28 U.S.C. §§ 1332(a)(1) and 1441(a)-(b)
 19 because both Plaintiffs are citizens of the State of Washington, all Defendants are
 20 residents of the State of Oregon, and the amount in controversy exceeds \$75,000.
 21 For these reasons, this Court would have had original jurisdiction over Plaintiff’s
 22 claims if Plaintiff had elected to file the action initially in federal court, and
 23 removal is proper. 28 U.S.C. §§ 1441(a), 1332(a)(1). All Defendants are
 24 represented by the undersigned counsel, and all join and consent to this removal.
 25 28 U.S.C. § 1446(b)(2)(A).
 26

NOTICE OF REMOVAL
 (No. _____)

A. There is Complete Diversity of Citizenship

This Court has original jurisdiction “where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs,” and controversy arises between “citizens of different States.” 28 U.S.C. § 1332(a)(1). In determining whether complete diversity exists, the citizenship of a limited liability company (“LLC”) is determined by the citizenship of its members. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“[A]n LLC is a citizen of every state of which its owners/members are citizens.”). Plaintiff Gene Scheel is principal of Plaintiff Tooth Acres, LLC, “a limited liability corporation, organized and operating under the laws of the State of Washington.” Ex. A (Complaint) ¶¶ 1-2. On information and belief, based on examination of publicly available documents and records, Plaintiff Scheel is a resident of Washington State and the sole member of Plaintiff Tooth Acres, LLC. Haynie Decl. ¶¶ 2-3. Plaintiffs are, therefore, both citizens of Washington to the best of Defendants’ understanding.

Defendants Mark Gordon Heron and Mary Kathleen Heron are residents of Oregon, and are the sole members of Hoodstock Ranch, LLC, “a limited liability company, organized and operating under the laws of the State of Washington.” *Id.* ¶ 4; Ex. A (Complaint) ¶¶ 3-4. Defendants are, therefore, all citizens of Oregon.

Because all Plaintiffs are citizens of Washington and all Defendants are citizens of Oregon, there is complete diversity of citizenship for purposes of federal jurisdiction under 28 U.S.C. § 1332(a)(1).

B. Plaintiff Alleges the Amount in Controversy Exceeds \$75,000.

In their first and third claims for relief, Plaintiffs allege they have “been damaged in the principal amount of \$506,000, plus prejudgment interest . . . plus a contractual late fee of \$25,000.00.” Ex. A (Complaint) ¶¶ 14, 27. In their second

1 and third claims for relief, Plaintiffs allege they have “been damaged in the
2 principal amount of \$77,250.00, plus prejudgment interest.” *Id.* ¶¶ 20, 28.
3 Plaintiff, therefore, alleges damages in excess of \$583,000.

4 These allegations conclusively establish the amount in controversy unless
5 they were made in bad faith or “it appears to a ‘legal certainty’ that the plaintiff
6 cannot actually recover that amount[.]” *See* 28 U.S.C. § 1446(c)(2) (In general,
7 “the sum demanded in good faith in the initial pleading shall be deemed to be the
8 amount in controversy”); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699
9 (9th Cir. 2007) (“[W]hen a complaint filed in state court alleges on its face an
10 amount in controversy sufficient to meet the federal jurisdictional threshold, such
11 requirement is presumptively satisfied unless it appears to a ‘legal certainty’ that
12 the plaintiff cannot actually recover that amount.”); *Ibarra v. Manheim Invs., Inc.*,
13 775 F.3d 1193, 1197 (9th Cir. 2015) (“In determining the amount in controversy,
14 courts first look to the complaint. Generally, ‘the sum claimed by the plaintiff
15 controls if the claim is apparently made in good faith.’”) (quoting *St. Paul Mercury*
16 *Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). Accordingly, Plaintiffs’
17 allegations in the Complaint establish that the amount in controversy exceeds the
18 jurisdictional requirement under 28 U.S.C. § 1332(a).

19 **III. DISTRICT ASSIGNMENT AND VENUE**

20 This Court is the district and division embracing the place where the State
21 Court action is currently pending (Klickitat County, Washington). It is therefore
22 the appropriate court for removal pursuant to 28 U.S.C. §§ 1441(a) and 1446(a).

23 **IV. REMOVAL IS TIMELY**

24 Defendant first received a copy of the Complaint on May 31, 2020. Haynie
25 Decl. ¶ 5. This Notice of Removal (filed June 25, 2020) is therefore timely filed
26 within the 30 days allowed under 28 U.S.C. § 1446(b).

1 **V. NOTICE TO STATE COURT**

2 Attached to this Notice is a true copy of the Complaint, which Plaintiff filed
3 in Klickitat County Superior Court and subsequently caused to be delivered to one
4 of the Defendants. *See Ex. A.* Proof of Notice to Plaintiff and to the Clerk of the
5 Klickitat County Superior Court will be filed separately.

6 Nothing in this Notice of Removal shall be interpreted as a waiver or
7 relinquishment of Defendants' right to assert any defense or affirmative matter,
8 including without limitation any defense available under Fed. R. Civ. P. 12, or any
9 other procedural or substantive defense available under State or Federal law.

10 Defendants reserve the right to amend or supplement this Notice of
11 Removal.

12 **WHEREFORE**, Defendants gives notice that this matter is removed to the
13 United States District Court for the Eastern District of Washington, and request
14 that this Court retain jurisdiction for further proceedings pursuant to 28 U.S.C. §§
15 1441 and 1446.

16
17 DATED this 25th day of June, 2020

s/ Erick J. Haynie
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Attorney for Defendants

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on June 25, 2020, I caused the following attorneys of record in the related state-court action to be served the foregoing NOTICE OF REMOVAL by the method(s) indicated:

Stephen G. Leatham Heurlin, Potter, Jahn, Leatham, Holtmann & Stoker, P.S. 211 E. McLoughlin Boulevard, Suite 100 Vancouver, WA 98666	<input type="checkbox"/> Via hand delivery <input checked="" type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email <input type="checkbox"/> Other: _____
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DATED this 25th day of June, 2020

s/ Erick J. Haynie
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Attorney for Defendants

CERTIFICATE OF SERVICE
 (No. _____)